United Nations A/AC.109/2017/8

General Assembly

Distr.: General
7 March 2017

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

Contents

		Page
I.	General	3
II.	Constitutional, legal and political issues	3
III.	Budget	5
IV.	Economic conditions	5
	A. General	5
	B. Trade	6
	C. Banking and financial services	6
	D. Transportation	7
	E. Tourism	8
V.	Social conditions	8
	A. Labour	8
	B. Social security and welfare	9

Note: The information contained in the present working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations as well as information provided by the Government of Spain and that available in public sources, including those of the territorial Government. Information was transmitted by the administering Power on 1 December 2016. Further details are contained in previous working papers, available from www.un.org/en/decolonization/workingpapers.shtml.

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C. Public health 9
D. Education 9
E. Crime and public safety 9
F. Human rights 10
VI. Environment 10
VII. Forum for Dialogue on Gibraltar 10
VIII. Future status of the Territory 11
A. Position of the administering Power 11
B. Position of the territorial Government 12
C. Position of the Government of Spain 12
D. Negotiations between the United Kingdom and Spain 13
E. Discussions between the United Kingdom and Gibraltar 14
IX. Consideration by the United Nations 15
A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples 15
B. Special Political and Decolonization Committee (Fourth Committee) 15
X. Action taken by the General Assembly 15

I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. According to the administering Power, the basis of the current relationship between the Government of the United Kingdom and its Non-Self-Governing Territories is enshrined in the constitution of each Territory; sovereignty over Gibraltar was ceded to the United Kingdom by Spain under the Treaty of Utrecht in 1713, with territorial waters flowing from sovereignty over the land. For its part, Spain claims that, under article 10 of the Treaty, it ceded only the city and castle of Gibraltar, its port, defences and fortresses. Against the backdrop of its long-standing appeal to Spain and the United Kingdom to hold talks on the question of Gibraltar (see resolution 2070 (XX), adopted on 16 December 1965), in 2016, the General Assembly, in its decision 71/521, among other things, urged the Governments of Spain and the United Kingdom, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question, in the light of the relevant resolutions of the Assembly and applicable principles, and in the spirit of the Charter of the United Nations (see sects. VIII to X below).

2. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus approximately 1.6 km long. The Spanish port of Algeciras lies 8 km across the bay to the west, and the continent of Africa is situated 32 km across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 km2; according to Spain, which claims sovereignty over the Territory, it is 4.8 km2. Issues relating to the isthmus and waters off Gibraltar continue to be a subject of contention.

3. According to the administering Power, in 2016, the population of the Territory was 33,140. The currency of the Territory is the Gibraltar pound, circulating at par with the pound sterling. The Territory's main trading and commercial transactions are with European countries, the United States of America and North African countries. The British Overseas Territories Act 2002 provides for the granting of British citizenship to British overseas territory citizens.

II. Constitutional, legal and political issues

4. Under the Gibraltar Constitution Order 2006, the Government of Gibraltar consists of the elected ministers represented in the Council of Ministers together with the British Crown, who is represented in Gibraltar by the Governor. Lieutenant General Edward Davis has been the Governor since January 2016. In accordance with the 2006 Constitution, the Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Gibraltar Police Authority) and for certain appointments to public office as conferred on him by it. The elected Government of Gibraltar is responsible for all other matters.

5. Following an election, the Governor, at his own discretion, appoints as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence among his peers. Other ministers

are appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament. In accordance with the 2006 Constitution, the Parliament may make laws for the peace, order and good government of Gibraltar, while the British Crown retains full power to make laws from time to time for the same above-mentioned purposes. According to the administering Power, such powers have not been exercised by the British Crown since the 2006 Constitution came into force. The 2006 Constitution also makes provisions regarding Crown lands in Gibraltar.

6. Gibraltar has a supreme court allowing for appeals to a court of appeal and subsequently to Her Majesty in Council, acting on the advice of the Judicial Committee of the Privy Council.

7. The Gibraltar Socialist Labour Party/Liberal Party of Gibraltar alliance headed by Fabian Picardo won the general elections held on 26 November 2015 with 68.03 per cent of the votes, winning 10 seats in the Parliament, against 31.37 per cent for the Gibraltar Social Democrats, who won the remaining 7 seats, with 0.6 per cent of votes rejected. Mr. Picardo was re-elected as Chief Minister. The next election is expected to be held in 2019.

8. The 2006 Constitution recognizes that, without prejudice to the administering Power's ultimate responsibility for Gibraltar's compliance with European Union law, matters, which under the 2006 Constitution are the responsibility of the elected ministers, shall not cease to be so even though they arise in the context of the European Union. In June 2004, after a legal and political campaign to exercise the right to vote in European elections, Gibraltarians took part in European parliamentary elections for the first time, which was achieved by the creation of a new electoral region for the purposes of the European parliamentary elections only, consisting of Gibraltar and the south-west region of England (the "combined region") by the administering Power. Gibraltarians again took part in European parliamentary elections in June 2009 and May 2014. Voters in Gibraltar participated in the referendum on the United Kingdom's membership of the European Union on 23 June 2016, and 96 per cent voted to remain in the European Union. At the fifth meeting of the Overseas Territories Joint Ministerial Council, held in London on 1 and 2 November 2016, the United Kingdom committed itself to involving Gibraltar and the overseas territories as it prepared for negotiations to leave the European Union, in accordance with their various constitutional relationships with the United Kingdom, to ensure that their priorities were taken into account.

9. The United Kingdom continues to believe that, as a separate Territory recognized by the United Nations and included since 1946 in its list of Non-Self-Governing Territories, Gibraltar enjoys the individual and collective rights accorded by the Charter. The United Kingdom also believes that the people of Gibraltar enjoy the right of self-determination. The administering Power is clear that the 2006 Constitution sets out the relevant competences for the Governments of the United Kingdom and Gibraltar.

10. For its part, the Government of Spain maintains the position that the 2006 Constitution does not affect the international capacity of Gibraltar; that its adoption was a reform of the colonial regime, which remains unaltered; and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of territorial integrity applies, not that of self-determination, as stated in

General Assembly resolution 2353 (XXII). In this context, the Government of Spain stresses that the participation of Gibraltar in any international instrument must be made through the United Kingdom as the administering Power responsible for the international relations of the Territory, including in the fields of international financial services, human rights and the environment.

III. Budget

11. As at March 2016, the revenue of the territorial Government for the fiscal year 2015/16 was £581.5 million and its expenditure stood at approximately £562.7 million. For the fiscal year 2016/17, the territorial Government estimated its overall government revenue at £590.8 million, with an overall government expenditure budget of £570.5 million. Of the estimated revenue in 2016/17, income taxes represent the largest share (43 per cent), followed by duties, taxes and other receipts (30 per cent). In addition, the territorial Government approved £61.2 million in expenditure on capital projects for 2016/17, to be funded through the Improvement and Development Fund, a decrease from £99.1 million in 2015/16. The highest possible rate of effective personal tax in Gibraltar is 28 per cent, with the company tax rate at 10 per cent.

12. The Government of Spain recalls that the European Commission has been carrying out an investigation into the tax regime of Gibraltar. Spain considers that Gibraltar is a tax haven and that under that regime the profits obtained abroad by companies registered in Gibraltar are not subject to taxation. On 7 October 2016, the European Commission decided to extend its ongoing investigation into Gibraltar's corporate tax regime concerning the latter's practice of granting tax rulings to some companies.

13. On the other hand, the administering Power maintains that Gibraltar adheres to all relevant European Union directives in relation to financial supervision and regulation, direct taxation and the fight against money-laundering.

IV. Economic conditions

A. General

14. Gibraltar has no known natural resources and lacks agricultural land. The economy has increasingly focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management, in addition to online gaming. According to the administering Power, the forecast gross domestic product of Gibraltar grew to £1.7684 billion in 2015/16, with an estimated gross domestic product per capita of £53,361.

15. Before 1980, the economy was largely dependent on expenditure by the Ministry of Defence of the United Kingdom. According to the administering Power, the situation changed dramatically over the years as United Kingdom military spending went from accounting for 60 per cent of the Gibraltarian economy to accounting for less than 6 per cent. Furthermore, according to the administering Power, in 2016, the Ministry of Defence employed some 550 persons.

B. Trade

16. According to the trade data provided by the European Commission, in 2015 the European Union's imports from Gibraltar amounted to €322 million, while exports to Gibraltar amounted to nearly €4.6 billion, reflecting decreases from approximately €1.2 billion (72.8 per cent) and €7 billion (34.3 per cent) respectively, in 2014.

C. Banking and financial services

17. According to the administering Power, Gibraltar has a well-developed private financial sector that is regulated by the Financial Services Commission. The regulatory scope extends to all forms of financial services, and Gibraltar's legislation, systems and administrative practices, which, in the view of the administering Power, are in full compliance with its European Union obligations, have been independently tested by reviews by the Financial Action Task Force, the International Monetary Fund and others. Gibraltar is also participating in the Financial Action Task Force national risk assessment and peer review process.

18. Tax evasion is a predicate offence for money-laundering and subject to suspicious transaction reporting. Gibraltar's Financial Intelligence Unit, as a member of the Egmont Group, shares information systematically with other members of the Group. According to the administering Power, Gibraltar has tax information exchange agreements with 98 countries, of which 71 are in force. Tax information has been provided to the United States in accordance with the Foreign Account Tax Compliance Act agreement on the automatic exchange of information and a similar agreement with the United Kingdom under the International Co-operation (Improvement of International Tax Compliance) (United Kingdom) Regulations 2015. In December 2015, the territorial Government published regulations for the automatic exchange of information with member States of the European Union, the International Cooperation (Improvement of International Tax Compliance) Regulations 2015, in order to implement the requirements of the Common Reporting Standard of the Organization for Economic Cooperation and Development (OECD), which came into force on 1 January 2016.

19. On 14 October 2015, the Committee of Ministers of the Council of Europe adopted a resolution by which it agreed to the request of the United Kingdom on behalf of Gibraltar to provide for the evaluation of Gibraltar by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. Furthermore, in the communiqué adopted at the fifth meeting of the Overseas Territories Joint Ministerial Council, in 2016, the overseas territories and the United Kingdom reiterated their mutual determination to continue to tackle corruption, fraud, money-laundering and the financing of terrorism and weapons of mass destruction and to further enhance transparency and law enforcement cooperation in the context of financial services. They also reiterated their shared commitment to providing the leadership necessary to meet the June 2017 deadline for the implementation of new arrangements regarding the exchange of beneficial ownership information on companies incorporated in their jurisdictions and to

continuing to provide the highest levels of law enforcement cooperation possible before that date.

20. The Government of Spain recalls that the European Anti-fraud Office of the European Commission concluded in a 2014 report that there was reason to believe that crimes of tobacco smuggling and money-laundering from Gibraltar had been committed, affecting the financial and other interests of the European Union.

21. The administering Power indicates that legal opinions have since been obtained by the Government of Gibraltar which suggested that allegations in the report of the Office were unfounded.

D. Transportation

22. Enhancements to road transportation arrangements in and out of Gibraltar were agreed upon at talks held in Córdoba, Spain, in 2006. They included the introduction at the fence/frontier of lanes in both directions, and red and green channels for both people and vehicles. Proportionate customs and police checks remain necessary, given that Gibraltar does not belong to the common customs territory of the European Union. Moreover, the United Kingdom and Gibraltar do not belong to the Schengen area for external border control purposes. In the view of the administering Power, since 26 July 2013, the Government of Spain has at times imposed disproportionate and time-consuming checks at the border between Gibraltar and Spain; while the situation has improved relative to the summer of 2013, it remains unpredictable.

23. The European Commission has dispatched three technical fact-finding missions to La Línea de la Concepción and Gibraltar, in September 2013, July 2014 and October 2015. The Commission issued recommendations to the authorities of the United Kingdom and Spain following its first two missions.

24. Spain stresses that the checks at the fence are in no manner politically motivated and are carried out only to ensure strict compliance with Spanish and European Union legislation, in accordance with the principles of randomness, proportionality and non-discrimination. The checks are essential for Spain to fulfil its obligations vis-à-vis the whole of the European Union and are especially necessary taking into account that in the area illicit trafficking of different sorts is common and that Gibraltar is neither in the Schengen area nor in the European Union Customs Union. Moreover, Spain underlines that the police and customs checkpoint at La Línea de la Concepción (the fence) does not correspond to the demarcation of the border recognized by Spain in accordance with the Treaty of Utrecht. Spain further stresses that it has fully complied with the recommendations of the European Commission regarding the management at the fence of the flow of persons, vehicles and goods and completed in 2015 the restructuring of the customs checkpoint and the installation of 13 automatic electronic passport-reading machines in each direction, which has made transit more fluid.

25. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of the airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the

airfield. According to the administering Power, legislation enacted by the Gibraltar Parliament provides for civil aviation safety and security, making civil aviation a responsibility of the Government of Gibraltar. Such responsibility continues to be rejected by Spain. Spain holds the position that the occupation by the United Kingdom of the isthmus on which the airfield was built is illegal and that it does not comply with public international law because it is not included among the areas ceded by the Treaty of Utrecht. For its part, the United Kingdom maintains that its sovereignty extends over the whole territory of Gibraltar, including its airspace and territorial sea.

26. The Strait of Gibraltar is a principal water route; the Territory's port facilities are used by many long-distance liners and cargo ships. According to the United Kingdom, it applies a three-nautical-mile area for British Gibraltar territorial waters (or less where the median line with other territorial waters applies), in line with the United Nations Convention on the Law of the Sea. According to Spain, it exerts its sovereign rights and jurisdiction over its territorial waters, including all maritime areas around Gibraltar (with the only exception being its port facilities).

27. The administering Power regularly challenges Spanish State vessels and protests to the Government of Spain about illegal incursions into British Gibraltar territorial waters by Spanish State vessels, citing violations of articles 17 to 19 of the United Nations Convention on the Law of the Sea, on the meaning of innocent passage, and of the Convention on the International Regulations for Preventing Collisions at Sea.

28. For its part, Spain states that what the United Kingdom describes as "illegal incursions" by Spanish vessels are routine activities of its ships in Spanish waters.

E. Tourism

29. The tourism sector recorded a decrease four years in a row from 2012, with a decrease from 2014 (10.3 million visitors) to 2015 (10.2 million visitors) of 0.8 per cent. The breakdown of the visitors in 2015 was around 188,000 by air (compared to approximately 176,000 in 2014), 358,000 by sea (313,000 in 2014) and 9,626,000 by land (9,762,000 in 2014). Arrivals by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily tourists from the United Kingdom; and arrivals by sea include visitors arriving by ferry from Morocco, by yacht and on day trips from cruise ships.

V. Social conditions

A. Labour

30. According to the administering Power, as at October 2015, there were 26,144 jobs in the Territory, including, from the largest industrial sectors, 3,472 jobs in building and construction, 3,510 in banking and finance, 3,205 in gambling and betting, 2,607 in the retail and wholesale trade and 2,375 in health and social work; the unemployment rate stood at 2.6 per cent of the resident population and 1.6 per cent of the total workforce, which included frontier workers.

B. Social security and welfare

31. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts, as mentioned in previous working papers, covering areas such as employment injury, disablement and industrial death benefits, unemployment benefits, maternity grants and allowances, death grants, old age pensions, survivor's benefits and guardian's allowances.

C. Public health

32. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory. The territorial Government continues to deal with the needs of the elderly.

D. Education

33. Education in Gibraltar is free and compulsory for children between 4 and 15 years of age. The language of instruction is English. Public education comprises 11 primary and 2 secondary schools, in addition to the Gibraltar College of Further Education and the Vocational Training Centre, serving more than 5,000 students. The Territory's literacy rate is assumed to be nearly 100 per cent. The University of Gibraltar, whose establishment had been announced in 2014 with the approved funding of £10 million, officially opened in September 2015.

34. According to the administering Power, government expenditure on education during the year ending in March 2016 was around £45 million, with expenditure on improving school buildings in the region of £1.3 million. Two new schools, a primary school for children aged 4 to 8 and a middle school for children aged 8 to 12, opened in 2015. Students who obtain a place at a university in the United Kingdom are entitled to scholarships from the Government of Gibraltar. In 2016, 994 students attended universities in the United Kingdom.

E. Crime and public safety

35. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority. The Governor has overall, ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security.

36. According to the 2016 report on the Royal Gibraltar Police by Her Majesty's Inspectorate of Constabulary, the Royal Gibraltar Police had a budget of £15.127 million providing for 238 officers and 36 support staff, and in 2014/15, there were 3,603 crimes recorded by the Royal Gibraltar Police.

37. According to the administering Power, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, a convention under the auspices of OECD, has been extended to Gibraltar.

F. Human rights

38. The following major international human rights instruments apply in Gibraltar: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The 2006 Constitution of the Territory includes a chapter on the fundamental rights and freedoms of the individual. According to the administering Power, the Government of Gibraltar formally requested the extension of the Convention on the Elimination of All Forms of Discrimination against Women to the Territory in October 2013 and of the Convention on the Rights of the Child in September 2016. In addition, on 26 October 2016, the Gibraltar Parliament adopted the Civil Marriage Amendment Act 2016, which made provision for same sex marriage.

39. In the communiqué adopted at the fifth meeting of the Overseas Territories Joint Ministerial Council in 2016, the United Kingdom and the overseas territories, including Gibraltar, agreed to work together to conduct a review of reservations to core United Nations human rights treaties ahead of the preparation of the report of the United Kingdom under the universal periodic review conducted by the Human Rights Council, to be submitted in 2017. They also committed themselves to working together to further develop the capacity of territories' national human rights institutions, where established, in line with the international standards set out in the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and to deepening understanding of their shared obligations with regard to international human rights.

VI. Environment

40. In the communiqué adopted at the fifth meeting of the Overseas Territories Joint Ministerial Council, in 2016, the Government of the United Kingdom and the overseas territories recognized the impact that climate change had on the economies, infrastructure and ecosystems of the territories and the important interest of the overseas territories in international efforts to combat and mitigate the effects of climate change. The Government of the United Kingdom committed itself to consulting with territorial Governments on the issue of the application of the Paris Agreement. It reiterated its full commitment to consulting the overseas territories ahead of its participation in international forums on climate change to ensure that their priorities were taken into account and to including them in delegations, where appropriate, while welcoming the territories' links with regional and international organizations.

VII. Forum for Dialogue on Gibraltar

41. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of the trilateral Forum for Dialogue on Gibraltar. Since 2010, no meetings have been held. From 2012 to 2016, the United Kingdom expressed the desire to continue with the Forum and, in the interim,

offered an informal, ad hoc dialogue involving, as appropriate, all relevant parties to the issues under discussion. Spain expressed the position that the Forum no longer existed and should be replaced with a new "ad hoc" mechanism for local cooperation in the interest of social well-being and regional economic development, in which the people of the Campo de Gibraltar and Gibraltar were represented. No ad hoc talks had been convened as at January 2017.

VIII. Future status of the Territory

A. Position of the administering Power

42. In a statement in exercise of the right of reply before the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, on 4 October 2016, the representative of the United Kingdom said that his Government recalled its sovereignty over Gibraltar and the territorial waters surrounding it and reaffirmed that Gibraltar, as a separate territory recognized by the United Nations and included since 1946 in its list of Non-Self-Governing Territories, enjoyed the rights accorded to it under the Charter of the United Nations. It also recalled that the people of Gibraltar enjoyed the right to self-determination and that the Gibraltar Constitution of 2006, endorsed in a referendum, provided for a modern and mature relationship between Gibraltar and the United Kingdom.

43. He also stated that his Government reaffirmed that it would not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes, and confirmed that it would not enter into a process of sovereignty negotiations with which Gibraltar was not content. It reaffirmed its commitment to safeguarding Gibraltar, its people and its economy.

44. The representative went on to say that the United Kingdom and Gibraltar remained firmly committed to the trilateral Forum for Dialogue as the most credible, constructive and practical means of strengthening relations amongst all parties. The United Kingdom regretted that the Government of Spain had withdrawn formally from those talks in 2012.

45. He concluded by saying that, under the 2006 Constitution, Gibraltar had competence for all policy areas except external relations, defence and internal security, which were reserved for the United Kingdom. Gibraltar's active negotiation in any dialogue process was therefore non-negotiable. As Gibraltar was a territory to which the European Union treaties largely applied, the Government of the United Kingdom was committed to fully involving the Government of Gibraltar as it prepared the process of exiting the European Union. Otherwise, the United Kingdom's vote to leave the European Union did not change its unwavering commitment to respect Gibraltar's wishes in respect of sovereignty (see A/C.4/71/SR.3).

B. Position of the territorial Government

46. On 4 October 2016, addressing the Fourth Committee, the Chief Minister of Gibraltar said, inter alia, that the Committee should recall that in 1966 Spain had rejected the formal offer made to it by the United Kingdom to settle the dispute before the International Court of Justice. Spain had refused to bring its case to the Court because it had actually ceded sovereignty over Gibraltar by legal treaty to Britain over 300 years previously.

47. He also stated that although it might seem reasonable on its surface, Spain's call for bilateral negotiations with the United Kingdom was not, because Gibraltarians would be excluded from the talks, and the only outcome acceptable to Spain would be its annexation of Gibraltar.

48. Furthermore, he stated that the Government of Spain saw the decision by the United Kingdom of Great Britain and Northern Ireland to leave the European Union, or "Brexit", as an opportunity to advance its territorial claim. It had offered Gibraltar a way to preserve its ties with the European Union while also bombarding it with threats of what could happen should it refuse. Although the majority of Gibraltarians had voted to remain in the European Union, Gibraltar was not prepared to give up sovereignty in order to do so. It had already made its desire to remain British quite clear in two free and fair referendums.

49. He also stated that Gibraltar was willing to participate in resumed talks in the trilateral Forum for Dialogue on Gibraltar, where it could work together with Spain to address shared challenges. Unfortunately, however, the Government of Spain seemingly relished the prospect of taking over Gibraltar against its will, and was attempting to use the United Nations decolonization process and Brexit in its favour.

50. He concluded by saying that the suggestion of the Government of Spain that the General Assembly not approve visiting missions to Territories that were subject to sovereignty disputes was illogical and counterproductive. Objective fact-finding was valuable and the Committee should visit to establish the truth for itself (see A/C.4/71/SR.3).

C. Position of the Government of Spain

51. On 4 October 2016, in his statement made before the Fourth Committee, the representative of Spain stated that, year after year, his country had addressed the Committee regarding the illegal occupation of the isthmus of Gibraltar and Spanish sovereignty over the territorial waters — neither of which had been ceded to the United Kingdom — and, above all, reiterated United Nations doctrine regarding the decolonization of that territory. Spain had consistently invited the United Kingdom, its friend and ally, to comply with the United Nations mandate and to enter into negotiations on Gibraltar. In the light of the recent United Kingdom vote to leave the European Union, Spain was therefore renewing its offer with a sense of urgency. Under the European treaties, Brexit would also imply the exit of Gibraltar, marking a radical shift in the Territory's relationship with Spain and entailing significant consequences for Gibraltar, whose economic model was based on full participation in the European Union internal market, and for the adjacent Spanish district of

Campo de Gibraltar, whose economy was closely interconnected with the Territory's given the major presence of Spanish workers in Gibraltar itself.

52. He went on to say that, consequently, Spain had formally invited the United Kingdom to open negotiations on a joint sovereignty agreement to ensure that the provisions of the European Union treaties would continue to apply to Gibraltar. In a post-Brexit European Union, that would only be possible if there was a political tie between Gibraltar and Spain. The offer was in no way an obligation; Gibraltarians were invited to study it in depth as they would want to participate in any future negotiations and their officials would be welcome to do so as part of the British delegation. While Spain would never relinquish its just claim for a definitive solution to the question of Gibraltar in line with the relevant General Assembly resolutions and the Charter of the United Nations, it was determined to work with the United Kingdom to reach an agreement.

53. He further stated that the proposal entailed four major points: possible dual-nationality status for Gibraltarians; maintenance of Gibraltarian self-governance institutions within the framework of a wide-ranging system of autonomy and in compliance with the Spanish constitutional system; maintenance of the Territory's special tax regime, insofar as it was compatible with European Union law; and dismantling the fence separating Gibraltar from the rest of the Iberian Peninsula. Spain and the United Kingdom would retain joint authority over matters of defence, foreign affairs, control of external borders, immigration and asylum.

54. He also stated that far from being an attempt to interfere in the lifestyle, customs, or traditions of Gibraltar, the proposal had been devised in consideration of his country's historic claims and with the socioeconomic well-being of the region and of the thousands of cross-border workers and businesses in mind. It would benefit all parties, solving a number of pre-existing problems and those that could arise following a United Kingdom exit from the European Union. It would end a centuries-old dispute between two allies and provide a new foundation for strengthening Hispano-British relations. The Gibraltarian economy would continue to enjoy the advantages of access to the European Union internal market and Spain would propose exceptions that took into account the special situation of Gibraltar and were compatible with European Union law. Furthermore, pending European Union legislation would be unblocked in such important areas as justice and home affairs, aviation and the environment. Gibraltarians opting for dual nationality would continue to benefit from all of the advantages of being European Union citizens. The dismantling of the fence could lead Spain to consider a comprehensive approach to economic development, maximizing the potential of the port and airport of Gibraltar and opening up business opportunities. Accompanied by an investment plan for Campo de Gibraltar, the offer would facilitate movement of workers and visitors and improve the lives of Gibraltarians (see A/C.4/71/SR.3).

D. Negotiations between the United Kingdom and Spain

55. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue, no bilateral negotiations were held in 2016. The Government of the United Kingdom has made it clear in the preamble to the 2006 Constitution of Gibraltar that it would "never enter into arrangements under which the people of

Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes". Moreover, the United Kingdom has also declared that no sovereignty-related talks can be entered into without the consent of Gibraltar, nor can it enter into a process of sovereignty negotiations with which Gibraltar is not content.

56. For its part, the Government of Spain continued to demand the renewal of bilateral sovereignty talks with the Government of the United Kingdom. It considers that the position of the United Kingdom goes against the doctrine established in the relevant General Assembly resolutions and against the commitment made with Spain in the Brussels Declaration of 1984.

E. Discussions between the United Kingdom and Gibraltar

57. In the communiqué adopted at the fifth meeting of the Overseas Territories Joint Ministerial Council, in 2016, the overseas territories and the United Kingdom stated that the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations, applied to the peoples of the overseas territories and reaffirmed the importance of promoting the right of the peoples of the territories of self-determination, a collective responsibility of all parts of the Government of the United Kingdom. They committed to explore ways in which the overseas territories could maintain international support in countering hostile sovereignty claims and for those territories with permanent populations who wished it, the United Kingdom would continue to support requests for the removal of the Territory from the United Nations list of Non-Self-Governing Territories.

58. Furthermore, in the same communiqué, the Government of the United Kingdom was clear that the result of the referendum on the United Kingdom's membership of the European Union did not change the Government's position on sovereignty over the Territories and underlined that the United Kingdom would never enter arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes, nor enter into a process of sovereignty negotiations with which Gibraltar was not content.

59. The Governments of the United Kingdom and Gibraltar have both recognized that the current Constitution provides for a modern and mature constitutional relationship between the two sides. The Government of Gibraltar believes it important to review the 2006 Constitution, together with the United Kingdom, to assess what further progress or changes are necessary and appropriate. This review should include the consideration of human rights issues and the question of removal of Gibraltar from the list of Non-Self-Governing Territories. According to the administering Power, in March 2016 the Gibraltar Parliament established a Select Committee on Constitutional Reform in order to assess what changes to the 2006 Constitution were necessary or desirable. While the United Kingdom has expressed its views about the mechanisms for delisting, both Governments note that, under Article 73 *e* of the Charter, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly removes a territory from its list of Non-Self-Governing Territories.

IX. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

60. A representative of Spain attended the Pacific regional seminar, held in Managua from 31 May to 2 June 2016, and made a statement, as did a representative of Gibraltar (see A/71/23, annex II).

61. The Special Committee, which discussed the question of Gibraltar in a meeting held on 13 June 2016, had before it the 2016 working paper prepared by the Secretariat concerning the Territory (A/AC.109/2016/8). As reflected in the summary record (A/AC.109/2016/SR.3), statements were made by the representative of Spain, the Chief Minister of Gibraltar and a representative of a civil society organization. On the proposal of the Chair, the Committee decided to resume the consideration of the question at its next session and to transmit the relevant documentation to the General Assembly in order to facilitate the consideration of the question by the Fourth Committee.

B. Special Political and Decolonization Committee (Fourth Committee)

62. The Fourth Committee of the General Assembly considered the question of Gibraltar on 4 October 2016 at its 3rd meeting, in which the Committee heard statements by Spain and the Chief Minister of Gibraltar. In addition, on 10 October 2016 at the 7th meeting, the United Kingdom made a statement. Also at the 3rd meeting of the Committee and at its 6th meeting, held on 7 October 2016, the United Kingdom and Spain exercised the right of reply (see A/C.4/71/SR.3 and 6).

63. At its meeting on 8 November 2016, the Fourth Committee adopted without a vote a draft decision on the question of Gibraltar (A/C.4/71/L.17), which was submitted by the Chair of the Committee (see A/C.4/71/SR.23).

X. Action taken by the General Assembly

64. On 6 December 2016, the General Assembly, on the recommendation of the Fourth Committee, adopted, without a vote, decision 71/521, on the question of Gibraltar. In that decision:

> The General Assembly, recalling its decision 70/520 of 9 December 2015:
>
> (a) Urged the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of the relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;

(b) Took note of the position of Spain on this issue, including its proposal to start new discussions on the basis of the Brussels Declaration, and also took note of Spain's presentation of a co-sovereignty offer before the Special Political and Decolonization Committee;

(c) Took note of the position of the United Kingdom on this issue, that was, the commitment never to enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes, nor enter into a process of sovereignty negotiations with which Gibraltar was not content;

(d) Took note of the desire of the United Kingdom to continue with the trilateral Forum for Dialogue;

(e) Took note of the position of Spain that the trilateral Forum for Dialogue did not exist any longer and should be replaced with a new mechanism for local cooperation in which the people of the Campo de Gibraltar and Gibraltar were represented;

(f) Encouraged the United Kingdom and Spain to engage in a constructive and responsive manner, with all relevant and appropriate parties, in order to find common solutions and make progress on issues of mutual benefit.